

**ORIGINAL**

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, D.C. 20554

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OCT 21 2002

In the Matter of

Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations

(Chillicothe, Dublin, Hillsboro and

Marion, Ohio)

)

)

)

)

MB Docket No. 02-266

RM-105.57

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Audio Division

**COMMENTS OF INFINITY BROADCASTING OPERATIONS, INC.**

Infinity Broadcasting Operations, Inc. ("Infinity"), licensee of radio stations WAZU(FM), WHOK-FM, and WLVQ(FM), Columbus, Ohio, by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby submits its Comments in the above-captioned proceeding. For the reasons set forth below, the showing submitted by Citicasters Licenses, Inc., licensee of Station WMRN-FM, Marion, Ohio and Citicasters Company, licensee of Station WSRW-FM, Hillsboro, Ohio ("Joint Petitioners") in this proceeding is defective and their Petition for Rule Making ("Joint Petition") should be denied. In support whereof, the following is shown.

**I. Background.**

The February 12, 2002 Joint Petition requests that the Commission amend the FM Table of Allotments to change Station WMRN-FM's community of license from Marion, a city in central Ohio, to Dublin, Ohio, a close-in suburb of Columbus, and its Channel from 295B to 294B1, as well as change Station WSRW-FM's community of license from Hillsboro to Chillicothe, Ohio and its Channel from 294B1 to 293A. The Commission issued a Notice of

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Proposed Rule Making in this proceeding on August 21, 2002 (the "*NPRM*" ).The NPRM set the comment date as October 21,2002 and these Comments are therefore timely filed.

**II. The Joint Petition Fails Because A Move Of WMRN-FM To Dublin, Ohio Would Not Advance The Commission's Core Allotment Policies.**

The Joint Petition seeks first to change the community of license of WMRN-FM, Marion, Ohio to Dublin, Ohio. To accomplish this change on its own merits, Joint Petitioners must persuade the Commission, *inter alia*, to: downgrade WMRN-FM's class from B to B1; create a substantial loss area in a less well-served part of Ohio than the Columbus market; and remove current service from 258,159 persons resident in 6656 square kilometers, all in an effort to provide new service to a close-in Columbus suburb that is already well served by the stations broadcasting in the Columbus Metro. Approval of such a scheme would be inconsistent with well-established Commission precedent

In evaluating changes in communities of license, the Commission considers, first and foremost, Section 307(b) of the Communications Act.' "[W]e believe it is axiomatic that our allotment priorities and policies are and should be applied consistent with and in furtherance of the goals of Section 307(b) of the Act.'" In the allotment context, Infinity recognizes that the

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<sup>1</sup> Section 307(b) provides as follows:

In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.

<sup>2</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd 7094, 7095 (1990).

Commission has awarded preferences for the provision of first local transmission service to a community. However, this preference is far from absolute

In this case, a grant of the Joint Petition would distort the Commission's allotment rules and policies. Although professing to advance the goals of Section 307(b) by providing a first local transmission service to Dublin, Ohio, a close-in suburb of Columbus, Joint Petitioners instead contravene bedrock allotment principles by proposing to remove a powerful station from an underserved independent community in order to serve a Columbus bedroom community whose residents currently enjoy a multiplicity of radio choices. The proposal would downgrade the station's class, and create extensive area and population coverage losses. In fact, from its proposed site, WMRN-FM would serve an area just over half the size it currently serves. Technical Exhibit to Joint Petition ("Technical Ex.") at Figure 3. In addition, Joint Petitioners propose to remove service altogether from 76.5% of the population and 78.5% of the area that WMRN-FM currently serves. *Id.* The concept of first local service, viewed in this context, cannot justify a grant of the Application.<sup>3</sup> The Commission, in explaining how the fundamental purposes of Section 307(b) take precedence over the rigid application of technical rules, has stated:

Consistent with precedent, we do not intend to apply the first local service preference of our allotment criteria blindly. We recognize that an inflexible application of that preference, without further analysis, could consistently result in our finding that a reallocation leading to first local service for a suburb of a much larger adjacent metropolitan center justifies removing a local service from a more remote community. We wish to dispel any concern that our new rule would lead to such a result.<sup>4</sup>

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<sup>3</sup> Indeed, it is the Commission's duty under Section 307(b) to ensure adequate service to smaller communities. *Communications Investment Corp. v. FCC*, 641 F.2d 954, 963-64 (DC Cir. 1981).

<sup>4</sup> 5 FCC Rcd 7094, 7096. The Commission has also stated:

(continued. . .)

Joint Petitioners' request that the Commission allow just such a result – they **seek** to justify a reallocation of a station from a more remote community to a suburb of a much larger adjacent metropolitan center under the auspices of providing first local service, exactly the type of “artificial or purely technical manipulation” the FCC sought to avoid.’

In this regard, it should be noted that the Commission has already allocated FCC-licensed spectrum to Dublin for use by that locale. Indeed, the Joint Petition itself includes a statement from the City of Dublin's web pages touting a radio station operating on “1610 AM” that provides “information on special events, City services, points of interest, road closings and detours and inclement weather or emergency procedures.”<sup>6</sup> This travelers’ information service station (WNXY474) provides Dublin with a targeted, specific source of local news and information. Under the totality of circumstances of this case, the existence of this local radio service weighs strongly against Joint Petitioners’ attempt to remove service from

(continued ~~from~~ previous page) \_\_\_\_\_

It has never been Commission policy to adhere rigidly to the concept of localism if the result of that adherence is to undermine the fair, equitable, and efficient distribution of radio service mandated by Section 307(b) of the Communications Act. We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission’s 307(b) related policies.

***Id.*** In this regard, the Commission will evaluate whether the proposed reallocation migrates a station into an Urbanized Area. ***See, e.g., Long Beach and East Los Angeles, California***, 10 FCC Rcd 2864, 2868 (Med. Bureau 1995). This factor weighs against the Joint Petition, as Joint Petitioners propose to migrate WMRN-FM from Marion, Ohio, outside the Columbus Urbanized Area, to Dublin, located inside the Columbus Urbanized Area. ***See*** Exhibit A hereto.

<sup>5</sup> ***Id.***

<sup>6</sup> ***Marion, Dublin, Hillboro, and Chillicothe, Ohio***, Petition for Rule Making, Citicasters Licenses, Inc. and Citicasters Company (Feb. 12, 2002).

Marion, Ohio and its environs. In addition, Dublin currently receives reception service from a plethora of stations

As a separate matter, Joint Petitioners have failed to demonstrate that Dublin is sufficiently independent of the city of Columbus to warrant a first local service preference. The Joint Petition contradicts itself on the issue of whether Dublin is part of the Columbus Urbanized Area (compare Joint Petition Summary with p. 3 thereof), and the NPRM in this matter assumes that Dublin is not part of the Columbus Urbanized Area. Dublin, Ohio, however, is in fact part of the Columbus Urbanized Area.<sup>7</sup> Despite the confusion, Joint Petitioners attempt to show under the principles set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) (“*Tuck*”) that Dublin is a community independent of Columbus, Ohio so as to warrant a first local service preference. As demonstrated below, that showing is inadequate.

In *Tuck*, the Commission identified eight criteria, set forth at p. 4 of the Joint Petition, by which it assesses the independence of a specified community of license. The Joint Petition’s *Tuck* showing is flawed in several critical respects. As Joint Petitioners implicitly conceded, the vast majority of Dublin residents work outside Dublin.’ This result comes as

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<sup>7</sup> See Exhibit A hereto

<sup>8</sup> See Joint Petition at p. 5. In fact, only 24% of Dublin residents work in the community, compared to the 54% of Dublin residents who work in the city of Columbus. Further, at least 63% of Dublin residents work in the larger metropolitan area. Migration Statistics Branch, U.S. Census Bureau, *Dublin, Ohio Flows* (1990), a copy of which is attached as Exhibit B hereto. Clara Reschovsky of the Migration Statistics Branch explained to Leventhal, Senter & Lerman PLLC that the first line notes the number of workers living in Dublin in 1990. Each subsequent line lists the number of workers by their work destinations and the corresponding percentage of the total of Dublin working residents. The information is divided into three tables because Dublin is part of three counties.

no surprise. Dublin is approximately a 13-mile drive to downtown Columbus and is also located adjacent to the 1-270 outerbelt that surrounds the city. Dublin also does not have its own public transportation facilities, but instead relies on Columbus's services. In addition, as Joint Petitioners' acknowledge, Dublin does not have its own telephone directory or fire department. Furthermore, contrary to Joint Petitioners' assertion, Dublin's public library is a branch of the Columbus Metropolitan Library System

Also contrary to Joint Petitioners' express contention, Dublin and Columbus are clearly part of the same advertising market. Dublin is part of the Columbus radio advertising market. Both weekly publications claimed as Dublin publications by Joint Petitioners, published by This Week Newspapers and Suburban News Publications, sell advertisers advertisements that appear in all of their 20 and 21 community newspapers, respectively, in addition to ads that are targeted to Dublin residents alone. "Dublin Life," published once every two months, maintains a list of its advertisers on its Web site, [www.dublinlifemagazine.com](http://www.dublinlifemagazine.com).<sup>9</sup> The vast majority of these advertisers are businesses located outside Dublin, Ohio, demonstrating conclusively that advertisers view Dublin as part of the Columbus advertising market. As all these facts demonstrate, Joint Petitioners' *Tuck* showing is unreliable and facially inadequate

**III. The Joint Petition Must Fail Because It Is Contingent Upon WSRW-FM's Concurrent Move From Hillsboro To Chillicothe, Ohio, A Change That Will Not Result In A Preferential Arrangement of Allotments.**

As demonstrated above, Joint Petitioners have failed to demonstrate that their Dublin proposal will advance the Commission's priorities and comport with Commission precedent.

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<sup>9</sup> Attached hereto as Exhibit C.

Even assuming *arguendo* that this thinnest of records could somehow be found to support Joint Petitioners' proposed move from Marion to Dublin, such a move can only be accomplished with a concurrent relocation of WSRW-FM from Hillsboro to Chillicothe, Ohio. Given the fundamental flaws that attend this contingency, the scales dramatically tip against the Commission's grant of the Joint Petition.

Joint Petitioners have not even tried to show how the reallocation of WSRW-FM from Hillsboro to Chillicothe will result in a preferential arrangement of allotments on its own merits. Such an attempt would obviously have been futile, as this second proposed reallocation clearly would not advance the public interest. The Joint Petitioners propose to downgrade WSRW-FM by a full class and withdraw service from 94.9% of the population and 95.1% of the area currently served by the station. Technical Ex. at Figure 6. Significantly, the Hillsboro/Chillicothe reallocation would result in a net loss of reception service to more than 150,000 persons and result in WSRW-FM serving an area **less** than a third the size of the area it now serves. The proposal would leave Hillsboro with local transmission service from a single AM station that has extremely limited nighttime service (25 watts). The extensive withdrawal of service from the area and population served currently by WSRW-FM, as well as the net service losses, clearly outweigh any claimed public interest benefits of reallocating the station to Chillicothe, which already has abundant local transmission and reception service. In fact, when the WSRW-FM community of license change is considered on its own merits, there appear to be no cognizable public interest benefits associated with the change in community of license and associated downgrade of WSRW-FM.

If permitted, the proposed change in community of license to Chillicothe would merely add one more Clear Channel voice to those already present in the market. Seven radio stations – WFCB(FM), WKKJ(FM), WOUH-FM, WOHC(FM), WVXC(FM), WCHI(AM), and

WBEX(AM) – are currently licensed to Chillicothe. Three of these stations (WKKJ, WCHI, and WBEX) are Clear Channel stations, with Clear Channel attempting to buy a fourth pursuant to a contested application (WFCB), and three (WOUH-FM, WOHC, and WVXC) are noncommercial stations. By contrast, if the Hillsboro channel reallocation were granted, Hillsboro would retain just a sole local voice during the day, and a negligible nighttime transmission service. The areas surrounding Hillsboro will also lose a valuable voice. For all of these reasons, Joint Petitioners have failed to demonstrate how the proposed FM allotment of WSRW-FM from Hillsboro to Chillicothe represents a preferred arrangement of allotments. If the reallocation to Chillicothe fails, the proposed reallocation to Dublin necessarily fails with it.

#### **IV. Conclusion.**

For the foregoing reasons, Infinity respectfully requests that the Commission deny the Joint Petition.

Respectfully submitted,

**INFINITY BROADCASTING  
OPERATIONS, INC.**

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October 21, 2002

Its Attorneys



**CERTIFICATE OF SERVICE**

I, Rebecca J. Cole, hereby certify that a copy of the foregoing "Comments of Infinity Broadcasting Operations, Inc." was mailed, first class postage prepaid, this 21<sup>st</sup> day of October, 2002 to the following:

\*Peter H. Doyle  
Chief, Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room 2-A267  
Washington, DC 20554

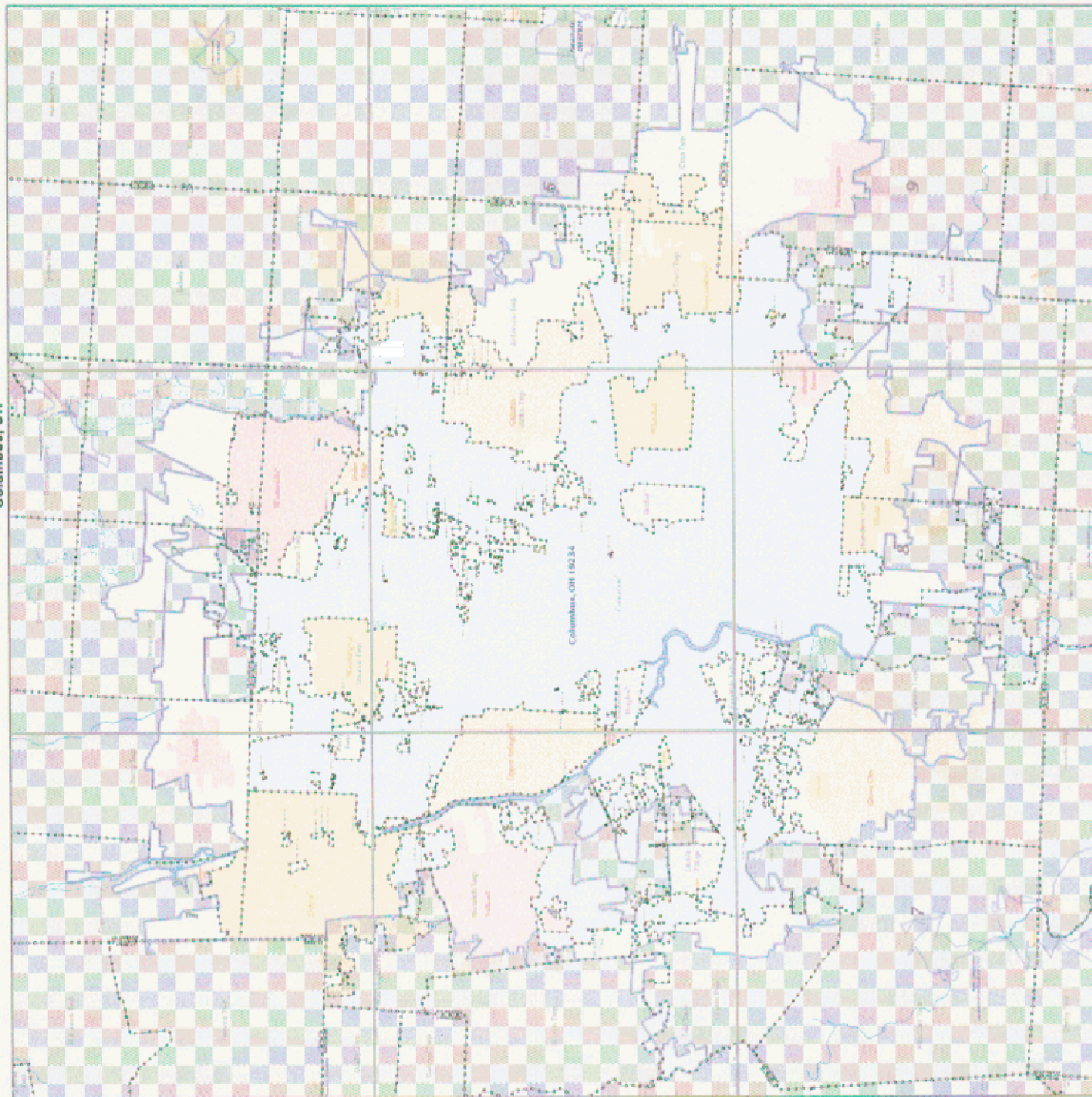
**Mark** N. Lipp, Esquire  
Shook, Hardy & Bacon  
Suite 800  
600 14<sup>th</sup> Street, NW  
Washington, DC 20005

\*By Hand

  
Rebecca J. Cole

## **EXHIBIT A**

URBANIZED AREA OUTLINE MAP (CENSUS 2000)  
Columbus, OH




 CC BY-SA

## **EXHIBIT B**

Source: 1990 Census Journey-to-Work Flows at the Place level.

---ST	CNY	PL	TFLOW	PCT	< LIVES BY WORKS >
<b>* 039</b>	<b>041</b>	<b>1195'</b>	<b>1763</b>	<b>100.00</b>	Dublin city, <b>OH</b> Delaware Part
039	049	0960	951	53.94	Columbus city, OH
039	049	1195	290	16.45	Dublin city, OH
039	041	1195	120	6.81	Dublin city, OH
039	049	4805	75	4.25	Worthington city, OH
039	049	1830	47	2.67	Hilliard city, OH
039	049	0410	39	2.21	Bexley city, OH
039	049	4355	27	1.53	Upper Arlington city, OH
039	041	9999	25	1.42	Delaware County, OH
039	097	1960	24	1.36	Jefferson village, OH
039	129	9999	19	1.08	Pickaway County, OH
039	049	4685	18	1.02	Whitehall city, OH
999	000	0000	128	7.26	Residual
---ST	CNY	PL	TFLOW	PCT	< LIVES BY WORKS >
<b>• 039</b>	<b>049</b>	<b>1195*</b>	<b>6607</b>	<b>100.00</b>	Dublin city, <b>OH</b> Franklin Part
039	049	0960	3153	47.72	Columbus city, OH
039	049	1195	1607	24.32	Dublin city, OH
039	049	9999	260	3.94	Franklin County, OH
039	049	4805	215	3.25	Worthington city, OH
039	049	4355	163	2.47	Upper Arlington city, OH
039	049	1830	108	1.63	Hilliard city, OH
039	159	9999	107	1.62	Union County, OH
039	049	4580	106	1.60	Westerville city, OH
039	159	2515	81	1.23	Marysville city, OH
039	041	9999	78	1.18	Delaware County, OH
999	000	0000	729	11.03	Residual
---ST	CNY	PL	TFLOW	PCT	< LIVES BY WORKS >
<b>• 039</b>	<b>159</b>	<b>1195*</b>	<b>9</b>	<b>100.00</b>	Dublin city, <b>OH</b> Union Part
039	097	2280	6	66.67	London city, OH
039	159	9999	3	33.33	Union County, OH

**Bold** indicates total number of workers residing in place

If you have any additional questions, please call 301-763-2454.

## **EXHIBIT C**



## Full List of Advertisers

[Current Issue](#)
[Future Features](#)
[Special Offers](#)
[Contact Us](#)
[Ad Rates](#)
[About Dublin Life](#)
[Masthead](#)
[Advertisers](#)
[Archives](#)
**Amusement/Entertainment**
[Columbus Museum of Art \(629-0300\)](#)
[Emerald City Players \(470-1525\)](#)
[Ohio Arts Council](#)
[Opera Columbus](#)
**Audiologists**
[University Hearing Professionals](#)
**Automobile Dealers/Repair**
[Dent Doctor](#)
[Dublin Auto](#)
[Tower Leasing](#)
[Toy Barn](#)
**Beauty**
[Absolute Perfection](#)
[Kenneth's Hair Salon & Day Spa](#)
[The Retreat Salon & Day Spa](#)
**Builders/Remodel/Architects**
[Custom Architectural Millwork \(764-9370\)](#)
[CV Perry Builders](#)
[Duffy Homes](#)
[Ellis-Kitchen & Bath \(461-1218\)](#)
[Ferguson Supply](#)
[James Hardie Siding Products](#)
[JS Brown Company](#)
[Midwest Closets \(848-4400\)](#)
[Miller Cabinet Co,](#)
[Nature Stone \(840-9200\)](#)
[North American Windows \(529-7050\)](#)
[The Point \(740-881-1109\)](#)
[Truberry Group](#)
[Wingler & Sons \(235-5000\)](#)
**Builders/Remodel/Architects**
[Bob Webb](#)
**Catering Services**
[Made From Scratch](#)
**City of Dublin Web Sites**
[City of Dublin](#)
[Dublin Arts Council](#)
[Dublin Chamber of Commerce](#)

Dublin Coventions and Visitors Bureau

**Communication**

Time Warner

Wide Open West

**Computer Technology**

Technology Mentors

**Dance**

American Dancesport (793-2623)

Dublin Dance Centre

**Education**

Columbus School for Girls

Dublin Montessori Academy (761-2020)

Franklin University

KB Learning Centers, Inc.

Marburn Academy (433-0822)

The Goddard School

Wellington School

**Entertainment**

sports Columbus Blue Jackets

Columbus Crew

**Finances**

Arlington Bank

Fred J. Minnich, Edward Jones Investments

Hamilton Capital Management

McDonald Investments (email- [bcseplo@mcinvest.com](mailto:bcseplo@mcinvest.com))

Appraisals and Consulting Quantum Company

Banking Key Bank

Prospect Bank

**Finances**

Third Federal

**Financial Planning/Institutions**

Davis Financial Management Group

**Fitness**

Exercise-Equipment Experts (488-2994)

Italia Studio

Stalaros Massage Therapy (582-4051)

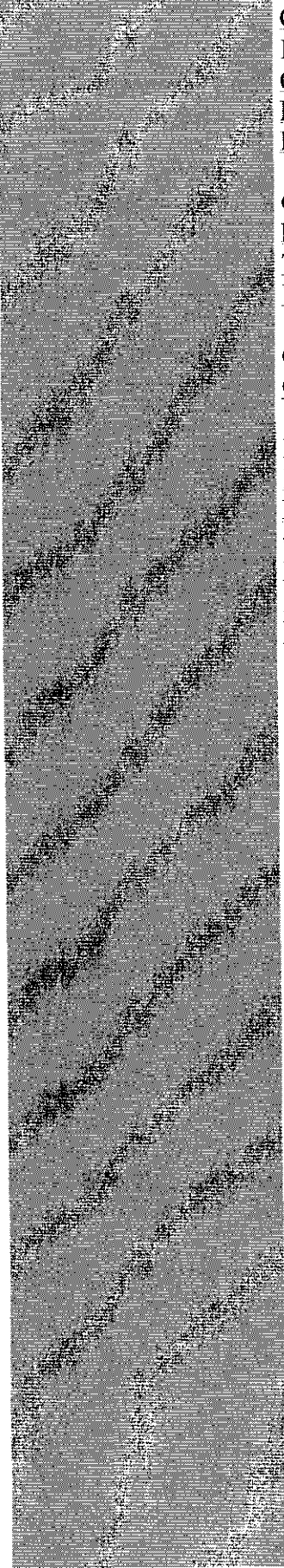
**Funeral Services**

Schodinger Funeral Services

**Furniture**

Andreas Furniture





Clive Christian  
Darron's of Arlington  
Grolls Fine Furniture  
Hilliards Furniture (889-8055)  
Kittle's

**Golf**

Dublin Golf Club  
Tartan Fields  
Wooden Putter

**Grocery**

Giant Eagle

**Health Services**

Barb McClatchie, D.D.S.  
Dr. Greg Schneider DDS (889-2211) Email: ssdds@ee.net  
Ohio Center for Pediatrics (766-3344)  
T. William Evans, D.D.S., M.D., F.A.C.S.  
The Sullivan Centre  
Vein Solutions (885-6856)

**Home Services**

Gerlach Steam Cleaning  
Green Oaks Landscape Management  
Invisible Fence  
Northern Lighting (891-7600)

**Hotels**

Adam's Mark  
Hawthorn Suites

**Jewelers**

Argo & Lehne Jewelers (614/457-6261)  
Diamond Cellar  
Dunkins Diamonds (718-0800)  
Jack Seibert Jewelers (486-4653)  
Leo Alfred Jewelers (614/889-5888)

**Legal Services**

Schottenstein Zox Dunn

**Marketing Communications**

Off Digital Media, Inc.

**Mortgages**

Priority Mortgage

**Photographers**

Peters Photography

**Printing Services**

The Ink Well

**Real Estate**

Ballantrae

Barb & Ted Lach, King Thompson Realty

Chris Close - King Thompson (889-0808)

HER

King Thompson Realty

Sharon Cook, King Thompson Realty

Tartan Fields

Truberry Group Custom Homes

**Religion**

Dublin Baptist Church

**Restaurants/Taverns**

City Barbeque

Schmidt's Sausage Haus

**Retail/Specialty Shops**

Bakers Village Garden Center and Gift Shoppe (889-9407)

Beacon Toys (734-0218)

Beckett's Doll House (848-9636)

Brown Shoes (486-4477)

By the Waters Edre

Cookie Bouquet (888-2171)

Country Sampler

Edinburgh Gardens (488-0998)

Escape to Paradise (336-8266)

Genesis Audio

Ha'Penny

Kerry Pierce, Chair Maker (740-653-7424)

Straders Schwinn (889-2453)

The Frame Station

The Piano Gallerv (764-7426)

The Window Shop (457-0718)

The Wine Shoppe

Thomas Kincade Galleries

Wild Bird Centers

**Retirement**

Brookdale Trillium Place

Convallarium at Indian Run (761-1188)

Dublin Retirement Village

MacIntosh Company (228-6660)

Wesley Glen (888-7492)

Windsor Place (336-3677)

**Shopping Centers**

Kingsdale Shopping Center



Lane Avenue Shopping Center  
Worthington Mall (841-1110)

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